

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

HUMPTY DUMPTY NURSERY SCHOOL
and KATHERINE SOCKWELL
Respondents

Case No.: I-00-40420

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.* (2001)) and Title 29 Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-40420) served June 29, 2001, the Government charged Respondents Humpty Dumpty Nursery School and Katherine Sockwell with a violation of 29 DCMR 316.2 for allegedly failing to maintain required child/staff ratios; 29 DCMR 316.1 for allegedly exceeding child group size limitations (6 weeks to 2½ year olds); 29 DCMR 322.1 for allegedly having insufficient materials, toys, supplies and equipment; 29 DCMR 318.2 for allegedly failing to provide nutritious meals/snacks; 29 DCMR 317.9 for allegedly utilizing soiled linens for bedding; and 29 DCMR 317.9 for allegedly utilizing a torn crib mattress for bedding. The Notice of Infraction charged that the violations occurred on May 23, 2001 at 32 Grant Circle, NW and sought fines of \$500 for each violation of 29 DCMR §§ 316.2, 316.1 and

322.1, and \$100 for each violation of 29 DCMR §§ 318.2 and 317.9, for a total fine sought of \$1,800.

Respondents entered timely pleas of Deny pursuant to D.C. Official Code § 2-1802.02(a)(3) to the charges of violating 29 DCMR §§ 316.2, 316.1, 322.1, 318.2, and 317.9 (providing soiled linen) along with a request for a hearing. In addition, Respondents entered a plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2) to the charge of violating 29 DCMR 317.9 (torn crib mattress).

A hearing was held on the denied charges on August 23, 2001. Carolyn Simms, Esquire appeared on behalf on the Government, and Respondent Katherine Sockwell appeared *pro se* on behalf of Respondents. April Bramble, Human Services Licensing Specialist, testified on behalf of the Government. Howard Maupin, Christine Johnson, Joan Taylor and Ms. Sockwell testified on behalf of Respondents. Based on the testimony of the witnesses, the documentary evidence presented and the entire record of this case, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

1. At all relevant times, Respondent Humpty Dumpty Nursery School (“Humpty Dumpty”) operated a Child Development Center (Business License No. 906893) at 32 Grant Circle, NW. (the “Grant Circle Facility”), and at 4221 7th Street, NW (the “Seventh Street Facility”). Petitioner’s Exhibit (“PX”) 101; Respondents’

Exhibit (“RX”) 201. At all relevant times, Respondent Sockwell served as the Director of Respondent Humpty Dumpty. *Id.*

2. On May 23, 2001 at approximately 3:00 PM, Ms. April Bramble, Human Services Licensing Specialist, visited the Grant Circle Facility at Respondent Sockwell’s request in order to measure the church portion of the facility in light of a comment by a Department of Human Services monitor that the facility was operating in excess of its capacity.¹ PX 100. Ms. Taylor, an assistant to Ms. Sockwell, accompanied Ms. Bramble during most of the inspection.
3. While measuring the first floor of the church, Ms. Bramble observed staff walking in and out of the church to an outside courtyard.² Ms. Bramble also observed a room with 39 children accompanied by six staff persons in a room (the “Toddlers’ Room”). *Id.*; *cf.* RX 209 (scheduled child groupings). Based on a label on the door of the Toddlers’ Room listing the ages of the children therein as 2 to 2½ years old, and her observance of their physical development informed by her over 14 years of experience managing and later inspecting child care facilities in the District of Columbia, Ms. Bramble determined the children in the room were 2 to 2½ years old, and I so find.³ Ms. Taylor accompanied Ms. Bramble and, based on

¹ The site housing the Grant Circle Facility is comprised of a church and an adjacent house. The Grant Circle Facility utilizes the first and third floors of the church as well as the house.

² Thirty-two staff persons reported for work at the Grant Circle Facility on May 23, 2001. RX 210.

³ Because the scheduled child groupings submitted by Respondents do not comport with those actually observed by Ms. Bramble, there is conflicting evidence in the record as to precise ages of the children observed by Ms. Bramble in the Toddlers’ Room. *See* RX 209. Respondents have not disputed, however, that Ms. Bramble observed the age ranges of the children that she testified to observing on the label posted on the Toddlers’ Room door. As such, I find by a preponderance of the evidence in the record that the children observed by Ms. Bramble in the Toddlers’ Room were 2 to 2½ years old.

Ms. Bramble's observation and questions about the location of the staff, attempted to determine why all the staff were not with their assigned groups.

4. Ms. Bramble then went to the adjacent room on the first floor in the Grant Circle Facility where she observed 19 infants accompanied by two staff persons (the "Infants' Room"). PX 100; *cf.* RX 209 (scheduled child groupings). Based on a label on the door of the Infants' Room listing the ages of the children therein as 6 weeks to 1½ years old, and her observance of their physical development informed by her over 14 years of experience managing and later inspecting child care facilities in the District of Columbia, Ms. Bramble determined the infants in the room were 6 weeks to 1½ years old, and I so find.⁴ Ms. Bramble counted three toys in the Infants' Room.⁵ Ms. Bramble also noticed that there were soiled linens in some of the cribs being utilized by the children, and that at least one crib contained a torn mattress.⁶ Although Respondents speculated that any soiled sheets observed by Ms. Bramble may have been in the process of being changed,

⁴ Because the scheduled child groupings submitted by Respondents do not comport with those actually observed by Ms. Bramble, there is conflicting evidence in the record as to precise ages of the children observed by Ms. Bramble in the Infants' Room. *See* RX 209. Respondents have not disputed, however, that Ms. Bramble observed the age ranges of the children that she testified to observing on the label posted on the Infants' Room door. As such, I find by a preponderance of the evidence in the record that the children observed by Ms. Bramble in the Infants' Room were 6 weeks to 1½ years old.

⁵ Respondents do not dispute Ms. Bramble's observation as to the number of toys she observed during the May 23rd inspection, but maintain that the facility as a whole had more than enough toys for the children. Towards that end, Respondents sought to introduce photographic evidence (marked as RX 211) at the hearing of the Infant's Room that would show that numerous toys were available on the day of the inspection. Upon the Government's objection as to the timeliness of Respondent's submission in light of the submission requirements set forth in this administrative court's July 25, 2001 Case Management Order, and Respondents' admission that the photographs were taken after the May 23rd inspection, the photographs were not admitted.

⁶ Respondents provide sheets and blankets for the children. PX 101 at 5.

there is no evidence in the record supporting this speculation. *Cf.* PX 101 at 7-8 (daily time schedule).

5. At approximately 4:30 PM, Ms. Bramble telephoned her supervisor who advised Ms. Bramble to write up the appropriate deficiencies and leave the premises. At that time, Ms. Bramble observed a parent at the facility who complained that her child had not been fed that day. PX 100 at Page 2. Ms. Bramble and Ms. Taylor then interviewed the staff to determine who was scheduled to feed the child and whether the child had been fed that day. The staff offered no information at that time. Respondents subsequently determined from staff that the child in question did not wish to consume the liquid left by the child's parent, but that other food was served to and eaten by the child.
6. Ms. Bramble then noticed a staff member feeding one child a snack while the children around that child were reaching for the snack.⁷ The caregiver advised the children that this was not their snack, but was a snack provided by the child's parents. Ms. Bramble then asked the staff about snacks for the other children she observed. The staff could offer no information about snacks for the children.
7. There is conflicting evidence in the record as to whether a snack was in fact served to the children observed by Ms. Bramble at the Grant Circle Facility on May 23, 2001. Ms. Bramble, who arrived at the facility at approximately 3:00 PM, did not observe the children being served snacks during her inspection, nor

⁷ A nutritious snack is a component of the daily reimbursable meal patterns specified for children from the ages of 0-12 years under the Special Food Service Program for Children of the U.S. Department of Agriculture. *See* U.S. Department of Agriculture Child Nutrition Website (<http://www.fns.usda.gov/cnd/care/ProgramBasics/Meals/Snack.htm>); 29 DCMR 318.2. *DOH v. Isle of Patmos Child Development Center*, OAH No. I-00-40239 at 5 n.6. (Final Order, March 8, 2001).

did the facility's staff when asked provide her with any information regarding when or if a snack had been served that day. Ms. Taylor testified, however, that a snack had been served at 2:00 PM that day, approximately one hour prior to Ms. Bramble's arrival. According to the facility's menu, the snack for May 23, 2001 consisted of milk and graham crackers. RX 204. Ms. Johnson, who prepares meals for the Grant Circle Facility at the Seventh Street Facility, testified that she did not recall a day when snacks were not served at the Grant Circle Facility, although she did not directly observe the staff distributing the snacks to the children on May 23, 2001.

8. According to the most current schedule of operations received by the Government, the Grant Circle Facility was scheduled to serve the children a snack between 3:30 PM and 4:00 PM, not 2:00 PM as testified to by Ms. Taylor.⁸ See PX 101 at 8. Not only did Ms. Bramble not observe the children being provided with snacks during that time, none of the staff questioned could advise Ms. Bramble when asked whether a snack had been served at all that day. This collective memory lapse on the part of the Grant Circle Facility's staff is inconsistent with Ms. Taylor's testimony that a snack had in fact been served just one hour prior, and, as a result, I do not credit Ms. Taylor's testimony in this regard. Therefore, while the Grant Circle Facility may have been *scheduled* to

⁸ The Grant Circle Facility's handbook had been previously submitted to the Government by Respondents in November, 2000 as part of the facility's November 14, 2000 license renewal, and was the most current handbook in the Government's file as of May 23, 2001. See RX 201. Although Respondents contend that the handbook is in the process of being revised, no revisions had been received by the Government as of May 23, 2001. In addition, Respondents contend that the schedule contained in the November, 2000 handbook does not apply to the infants and toddlers.

serve the children observed by Ms. Bramble a snack on the afternoon of May 23, 2001, I find by a preponderance of the evidence that a snack was not in fact served.

9. Ms. Bramble left the facility at approximately 7:00 PM and subsequently provided a copy of a statement of deficiencies to Ms. Sockwell.
10. Respondents have admitted violating 29 DCMR 317.9 on May 23, 2001 by failing to provide adequate bedding, *i.e.*, utilizing a torn crib mattress, at the Grant Circle Facility.
11. Respondents have accepted responsibility for their unlawful conduct as it relates to utilizing a torn crib mattress at the Grant Circle Facility on May 23, 2001.
12. There is no evidence in the record of a history of non-compliance on the part of Respondents.

III. Conclusions of Law

A. 29 DCMR 316.2 (failing to maintain child/staff ratios)

Respondents have been charged with violating the provisions of 29 DCMR 316.2 on May 23, 2001. That regulation provides:

There shall be a teacher, who may also be the director, and an assistant teacher or aide for each group at all times. In part-day

However, no such exclusions to the Grant Circle Facility's regular child care program schedule are noted in the excerpts of the handbook submitted to this administrative court. *See* PX 101 at 3, 7-8.

programs (up to four (4) hours per day), a volunteer may be substituted for an assist[ant] teacher or aide. During non-peak hour[s] (before 8:30 a.m. and after 4:30 p.m.), an assistant teacher may substitute for a teacher.

On May 23, 2001, Ms. Bramble observed six staff persons in the Toddlers' Room and two staff persons in the Infants' Room. Findings of Fact ("FOF") at ¶¶ 3-4. Notwithstanding the size of the Toddlers' and Infants' Room groups (an issue that will be addressed below), there is no evidence in the record as to whether the staff observed by Ms. Bramble attending those groups were teachers, assistant teachers, and/or other aides. As a result, there is nothing in the record by which this administrative court can conclude, by inference or otherwise, that Respondents did not have a "teacher, who may also be the director, and an assistant teacher or aide for each group at all times." *Cf. DOH v. Tots Nursery School*, OAH No. C-00-80001 at 6 (Final Order, November 13, 2000) (concluding, based upon logical and mathematical inference, that respondent's child care facility violated § 316.2 during peak hours (between 8:30 A.M. and 4:30 P.M.)) where facility maintained four groups of children but employed only three qualified teachers).

Accordingly, the Government has not met its burden of proof, and its charge that Respondents violated 29 DCMR 316.2 on May 23, 2001 shall be dismissed. *See* D.C. Official Code § 2-1802.03(a).

B. 29 DCMR 316.1 (exceeding child group size limitations)

Respondents have been charged with violating the provisions of 29 DCMR 316.1 on May 23, 2001. 29 DCMR 316.1 provides, in relevant part, that the size of any one (1) group of children shall not exceed that specified in the following chart for each age group:

<u>AGE</u>	<u>MAXIMUM SIZE OF GROUP</u>	<u>CHILD-ADULT RATIO</u>
2 years to 2 years, 6 months	8	4 to 1
2 years, 6 months through 3 years	16	8 to 1
....		

On May 23, 2001, Ms. Bramble observed 39 children, between the ages of 2 and 2½ years old, accompanied by six staff persons in the Toddlers' Room. FOF at ¶ 3. Pursuant to the requirements of § 316.1 the maximum group size should have been eight children, with two adults per group. Whatever the precise number of the groupings of the 39 children was that day – an issue I do not decide here -- it follows mathematically that, given the ages of the children, there should have been at least ten staff persons in the Toddlers' Room, not the mere six observed by Ms. Bramble. 29 DCMR 316.1.

Accordingly, I conclude that Respondents violated 29 DCMR 316.1 on May 23, 2001.⁹ A fine of \$500 is authorized for that violation which shall be imposed without reduction. *See* 16 DCMR 3222.1(i).

⁹ Because I conclude that Respondents violated § 316.1 on May 23, 2001 with respect to the Toddlers' Room, and the Government has charged only a single violation of that provision, I do not reach the issue of whether the grouping and staffing on May 23, 2001 for the Infants' Room was violative of § 316.1.

C. 29 DCMR 322.1 (failure to provide sufficient toys)

Respondents have been charged with violating 29 DCMR 322.1 on May 23, 2001. That regulation provides:

There shall be sufficient indoor and outdoor play materials, toys, supplies, and equipment suitable to the ages of the infants and children to stimulate creative play.

Section 322.1 is contained in section 322 of DCMR Title 29. By its terms, section 322 specifies the equipment and supplies requirements for child development *homes*, not child development *centers* such as Respondent Humpty Dumpty. FOF at ¶ 1; 29 DCMR 399.1 (defining child development centers and child development homes); *cf.* 29 DCMR 317.5 (setting forth equipment and supplies requirements for child development centers). Accordingly, the Government's charge that Respondents violated § 322.1 on May 23, 2001 shall be dismissed.

D. 29 DCMR 318.2 (failure to provide nutritious meals/snacks)

Respondents have been charged with violating 29 DCMR 318.2 on May 23, 2001. That regulation provides:

According to the program offered, food suitable to the ages of the children shall be provided using varied menus which shall be consistent with the meal patterns for young children specified under the Special Food Service Program for Children of the U.S. Department of Agriculture.

On May 23, 2001, the children observed by Ms. Bramble at the Grant Circle Facility were not, with the exception of one child, provided a snack during the scheduled snack time, *i.e.*, 3:30 PM to 4:00 PM. FOF at ¶¶ 6-9. Although Respondents have argued that the snack time had been pushed back to 2:00 PM that day, none of the Grant Circle Facility's staff advised Ms. Bramble of this when questioned on the day of the inspection. Moreover, even if the staff had advised her of the alleged schedule change, it would not, as a matter of law, have been effective. *See* 29 DCMR 304.4 (licensee of child development facility shall inform the Department of Health of operation changes that could affect licensure); *DOH v. Easter Seals Society, Inc.*, OAH No. I-00-40102 at 10 (Final Order, February 7, 2001) (holding that proper § 304.4 notice must be given to the Department of Health in advance of an inspection for child development facility programming change to be deemed effective).

Accordingly, I conclude that Respondents violated 29 DCMR 318.2 on May 23, 2001. A fine of \$100 is authorized for that violation which will be imposed without reduction. 16 DCMR 3222.2(f).

E. 29 DCMR 317.9 (failure to provide adequate bedding: torn crib mattress/soiled linens)

Respondents have been charged with twice violating 29 DCMR 317.9 on May 23, 2001. That regulation provides:

In full-day programs, there shall be a clean cot for each child under six (6) years of age. A clean blanket for each child shall also be

provided by the child's family, or when necessary, by the center. The cots shall be stacked or folded when not in use, so as not to infringe on play space.

Respondents have admitted violating 29 DCMR 317.9 on May 23, 2001 by utilizing a torn crib mattress at the Grant Circle Facility. FOF at ¶ 10. A fine of \$100 is authorized for that violation which, in light of Respondents' acceptance of responsibility and the lack of evidence in the record of a history of non-compliance, shall be reduced to \$75. 16 DCMR 3222.2(d); D.C. Official Code § 2-1802.02(a)(2); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

As to the Government's second charged violation of 29 DCMR 317.9, Ms. Bramble observed soiled linen in some of the cribs being used by the children. FOF at ¶ 4. Given the nature of the services provided by child development centers such as Respondent Humpty Dumpty, it is highly unlikely as a practical matter that all of the linens utilized will remain clean throughout the course of the day. Reasonable allowances are to be made within the meaning of the regulation for facility staff to identify linens that may have been recently soiled and to promptly change those linens. The staff of child development facilities must remain reasonably vigilant, however, to ensure that the bedding it provides the children is kept clean.

In this case, Respondents' staff was not reasonably vigilant in this regard. Although Respondents speculate that the soiled linens observed by Ms. Bramble may have been in the process of being changed, there is nothing in the record to support this version of events. FOF at ¶ 4. Accordingly, I conclude that Respondents Humpty Dumpty violated 29 DCMR 317.9 on May 23, 2001. A fine of \$100 is authorized for that violation which will be imposed without reduction. 16 DCMR 3222.2(d).

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record of these proceedings, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondents are **NOT LIABLE** for the violations of 29 DCMR §§ 316.2 and 322.1 as specified in Notice of Infraction I-00-40420; and it is further

ORDERED, that Respondents are **LIABLE** for the violations of 29 DCMR §§ 316.1, 318.2, 317.9 (soiled linens) and 317.9 (torn crib mattress) as specified in Notice of Infraction I-00-40420; and it is further

ORDERED, that Respondents, who are jointly and severally liable, shall pay fines in the total amount of **SEVEN HUNDRED AND SEVENTY FIVE DOLLARS (\$775)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05; and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7)

/s/ **2/5/02**

Mark D. Poindexter
Administrative Judge